

MICAELA BORRES AND PASCUAL BARZA, PETITIONERS AND APPELLEES, VS. THE MUNICIPALITY OF PANAY, PROVINCE OF CAPIZ, OBJECTOR AND APPELLANT.

G. R. No. 15851. January 11, 1922

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On October 29, 1915, Micaela Borres commenced proceedings in the Court of First Instance of Capiz for the administration of the estate of Pio Nono Bidiones, alleging in her petition that on the 9th day of November, 1914, Pio Nono Bidiones died, single and without issue, leaving personal and real properties worth about P45,000; that no will was executed by the deceased and that the petitioner has the right to be appointed administratrix of the intestate estate, she being the mother and heir at law of the deceased Bidiones.

During the pendency of the proceedings, the provincial fiscal of Capiz, on behalf of the municipality of Panay, Capiz, petitioned the court to allow him to intervene, alleging that Pio Nono Bidiones died, leaving no legitimate heir, and that his estate should escheat to the Government of the Philippine Islands; that the petitioner, Micaela Borres, is not the natural mother of the deceased Pio Nono Bidiones, as the man by whom he was begotten was married and could not legally marry Micaela Borres at the time of the conception of Pio Nono, and prayed that inquiry be made to find whether there were any heirs or persons having any right to any share of the inheritance of the deceased.

The attorney for Micaela Borres opposed the claim of the provincial fiscal of Capiz, and alleged that at that stage of the proceedings it was not proper to question the right of the petitioner to inherit the property of Pio Nono Bidiones, or to set up any claim of the Government to succeed by escheat.

Evidence having been received upon this point, the court denied the petition of the provincial fiscal on the grounds stated in its order dated April 1, 1919.

From this order the attorney for the municipality of Panay has appealed to this court.

The appellant alleges that the lower court committed two errors: (a) In holding that the municipality of Panay could not be permitted to introduce any evidence tending to prove that the deceased Pio Nono Bidiones was an adulterous child; and (b) in holding that the said municipality has no right to intervene in these proceedings, under the provisions of section 750 of the Code of Civil Procedure, for the reason that the deceased was not in possession of the properties that he had inherited from his adopted mother Petrona Bunda.

Before going into the question, we should note the fact that, in our opinion, the order or ruling appealed from is of an interlocutory nature, and not being appealable, as has been repeatedly held by this court, we could be justified in remanding the case to the court of origin for further proceedings until final decision is rendered by the court, approving the distribution that might be made of the estate in litigation. In the present case, however, we believe that the questions herein raised by the appellant for decision will undoubtedly be raised again when the court

renders its final judgment, in which case the remanding of the case will only cause delay and additional expense to the parties interested. To avoid these inconveniences and taking into account the particular circumstances of the case at bar, and in harmony with the practice followed in this jurisdiction in similar cases, we believe it just that the errors assigned by the appellant should be decided upon their merits.

As a preliminary remark, it must be noted that, according to the record, Pio Nono Bidiones was adopted by the spouses Maximo Bidiones and Petrona Bunda with approval of the court. Micaela Borres gave her consent, and, in a public document filed in the adoption proceedings, acknowledged that while yet unmarried she had a child, Pio Borres, begotten by a man whose name she would not reveal. In her last will, Petrona Bunda instituted her adoptive child, Pio Nono Bidiones, as her heir to succeed to certain specified properties. During the pendency of the testamentary proceedings for the administration of the estate of Petrona Bunda, intestate proceedings were instituted for the settlement of the estate of Pio Nono Bidiones, so that, the property that the latter received from her adoptive mother is the subject-matter of the intestate proceeding instituted by her natural mother, Micaela Borres, the appellee.

Thus it results that in the instant case we are concerned with the inheritance of a natural child who died, leaving no legitimate or natural descendants. Who is called upon to succeed him? Under article 846 of the Civil Code, the right of succession which the law grants to natural children is reciprocally given to the natural father or mother in the same cases. In other words, the legitime pertaining to the acknowledged natural child is also given, by reciprocity, to the natural father or mother in the same cases. And this is but an application of the principle of reciprocity that underlies all rules of succession, by virtue of which, the parents succeed their children in the same way that the children succeed their parents. And when the deceased is a natural child, the father and the mother jointly, or the father or the mother separately, if any of them has legitimated or acknowledged said child, have the right to receive the legitime, in accordance with article 807 of the Civil Code, which fixes the order of succession, naming in the first place the legitimate children and descendants, in the second place the legitimate ascendants and in the third place, in the absence of the former, the surviving spouse and the natural children. And when succession takes place by the death of a natural child, as there can be no legitimate ascendants, the law gives the natural father or mother the right to succeed in the manner and to the extent provided for in articles 834, 835, 836, 837, 841, 842, and 846 of the same Code.

As the right which the law grants the natural parents to succeed their natural children is but reciprocal, and the natural child cannot enforce his right as such unless he has been previously acknowledged, the question raised, in the last analysis, is to determine the effect of the appellee's acknowledgment of Pio Borres or Pio Nono Bidiones as her child.

Under the Civil Code, a child can be acknowledged either by both parents jointly or by the father or mother separately. When the acknowledgment is made by both parents jointly, the child will be considered a natural child, if at the time of its conception the parents were competent to contract marriage with or without dispensation. When the acknowledgment is made by only one parent, the law is satisfied if the father or mother who acknowledges the child was at the time of the child's conception competent to marry. In this case, says article 130, the child is presumed to be a natural one if the parent acknowledging it was at the time of the conception legally competent to contract marriage.

Commenting on the provision of the law authorizing the parents to acknowledge their natural children, jointly or separately, Manresa says:

"The authority granted by article 129 to parents introduces an innovation in the law of our country. In all the previous laws there was a presumption which was deemed indisputable, to wit, that the mother was always known; " that is why in every act of acknowledgment, reference only was made about the father. This is seen

from laws 5, 6 and 7, title 15, Partida 4, and the Law 11 of Toro.

"More consonant with reality, our Code admits the possibility of the mother being unknown, in which case the necessity of acknowledgment cannot be dispensed with; and therefore, authorizes her to make it separately from the father either voluntarily, or when she is compelled so to do by the provisions of article 136.

"The joint acknowledgment by both parents gives great force and solemnity to the act and greater stability to the status of the child, whereby the right of the latter is satisfied to the utmost. This is admitted by all modern codes. The acknowledgment by only one of the parents, which, as we have already seen, was traditional in the law of our country, is also admitted either expressly or impliedly by foreign legislations; it so appears from articles 335 and 339 of the French Code, 325 of the Argentine, 175 of the Italian, 123 of the Portuguese, and others. The laws of Arizona go further than that—they give to the acknowledgment by one of the parents the effect of a joint legitimation. Something of the kind has been noticed by us in the Partidas.

"The requirements are not, however, the same in both cases. In order that the father and mother may make the acknowledgment jointly, it is necessary that the child be really a natural one, that is, that he must have the requisites of article 119. But when the acknowledgment is made by only one of the parents, article 130 allows more latitude, putting into effect the law of Partidas.

"As a matter of fact, there is in this case but one element to be taken into consideration—the parent who acknowledges. The other is unknown, and, therefore, cannot be required to comply with any requisite. The law must necessarily be contented with the requisite being complied by the one known, who must show his legal capacity to contract marriage at the time of the conception. The Code cannot go further, nor require that the name and status of the other parent be revealed; for, besides being an investigation of the paternity to which the Code is opposed on principle, it would give rise to scandalous question. Nor should it surprise any one if through this means children be acknowledged who in fact are not natural (a necessary consequence of the article under comment), because the high principles of justice are always in favor of the children, and they should not be deprived of this means of improving their status, which after all is far from engendering the special disturbances that candid people, who are ignorant of actual life, imagine."

From an examination of the provisions of the Civil Code, relating to acknowledgment of natural children, it will be seen that a natural child can be acknowledged by the father and mother jointly, or by only one of them (art. 129) ; that in the case of the acknowledgment being made by only one of the parents, it will be presumed that the child is a natural one, if the one who acknowledges it was at the time of conception legally competent to contract marriage (art. 130) ; that when the acknowledgment is made separately by either the father or mother, he or she cannot reveal the name of the person by whom the child was begotten, nor mention any circumstance by which such person might be known. No public officer shall authenticate any document in violation of this provision. Should he do so, notwithstanding this prohibition, he shall be liable to a fine of from 125 to 500 pesetas, and the words containing such revelation shall be stricken out de oficio (art. 132) ; that the father is bound to acknowledge his child in the three cases therein specified (art. 135) ; that the mother is bound to acknowledge her natural child in the cases provided for by the law (art. 136) ; that the acknowledgment can be contested by any persons thereby prejudiced, if the child acknowledged does not fall within the terms of paragraph 2 of article 119, or it was made without compliance with the provisions of this section (art. 138); that with the exception of the cases wherein the paternity or maternity is established in a final judgment rendered in a criminal or civil case, or wherein the paternity or maternity appears from an indubitable document written by the father or mother whereby the filiation is expressly acknowledged, no complaint shall be admitted, the purpose of which is to investigate either directly or indirectly the paternity of natural children who have not the legal status of natural children (art. 141).

Under the Civil Code, there are two kinds of natural children: (a) Natural children proper, who are those born out of wedlock of parents who were at the time of the conception competent to marry with or without dispensation

(art. 119, par. 2, Civil Code) ; and (b) natural children by presumption, who are those acknowledged by the father or mother separately (art. 130).

By intervening in these proceedings, the appellant is, in fact, contesting the acknowledgment of a natural child made by the mother separately. May this acknowledgment be contested on the ground that the father was not at the time of the conception of said child legally competent to contract marriage, when said father did not join the acknowledgment? Were we to follow the provisions of article 138 only of the Civil Code, an affirmative answer would be unquestionable, but in our opinion, there are other articles of the Code, which lead to a decision in the negative. Should it be permitted in the case at bar to reveal the name of the parent who did not join the acknowledgment, article 132 would be a surplusage, and, as Amandi says, the precautions taken by the law to prevent the disclosure of the name and the identification of the person who did not join the acknowledgment would be useless.

On the other hand, the purpose of the appellant's claim is to investigate the paternity, which, on principle, is prohibited by the Code. The provisions of No. 5 of the Law of Bases for the preparation and publication of the Civil Code permit the investigation of the maternity, but not of the paternity, except in criminal cases or where there exists an instrument written by the father stating his desire to acknowledge the child and it appears in an unmistakable form in a statement deliberately intended for that purpose, or where the child has been in the enjoyment of the status of a natural child. And the reason given by treatise writers is that generation is a mysterious act of nature and whatever is done to disclose it will lead to error, from which erroneous and deplorable consequences may follow, while pregnancy and delivery are external acts susceptible of investigation and proof, as are all ordinary and visible facts in life.

Sanchez Roman remarks "that the very broadness of the terms of article 138, which permits the acknowledgment to be contested where the acknowledged natural child does not fall within the terms of paragraph 2 of article 119, or where the acknowledgment has been made in violation of the provisions of the Code, is open to dangerous applications, sometimes contrary to other provisions of the Code. Such would be the result if the principle prohibiting the investigation of paternity sanctioned by the aforesaid Basis 5 and by all the articles dealing therewith, as well as the prohibition of articles 130 and 132 about disclosing the name of the father, or the mother when only one, and not both, of them make the acknowledgment, could be violated by means of the right to contest the acknowledgment of natural children born of parents who could not legally marry with or without dispensation at the time of the conception, or of those acknowledged without complying with the provisions of this section (arts. 129-138)."

And it has to be so, because he who believes that his interests have been injuriously affected by the acknowledgment would, under the provision of article 138, be required to present evidence to support his allegation, the paternity would then be judicially discussed and investigated, and said article 138 would turn out to be a means of rendering ineffectual the prohibitive rule contained in the Law of Bases and in other articles of the Code prepared in harmony therewith.

Solving this question, Manresa, in his commentaries on article 138, says:

"The acknowledgment can be contested in two cases: First, when the acknowledged child is not a natural one within the terms of article 119; and, second, when there is a contravention of any of the provisions contained in this section.

"Anent the first case, there arises the doubt whether it invalidates the provisions of articles 130 and 132; for the right to contest being unrestricted, it seems that the provision is also applicable to the case where the acknowledgment is made by only one of the parents, inasmuch as to establish the fact that the child is not a

natural one and, therefore, cannot be acknowledged, it is necessary to investigate and divulge the name of the other parent, thereby modifying in fact the provisions of article 132. In connection with this same question, Goyena holds that there is no conflict between the two things, because the acknowledgment is to be contested by assailing either the form of the instrument on the ground that it is not authentic or is irregular, or its contents if the same were procured through fraud or misrepresentation, but without indulging in odious exceptions and infamous inquiries, of which there is no proof nor even any indication in the instrument. Although this interpretation does not absolutely preclude the possibility of investigating the name of the other parent for the purpose of proving that the child is not a natural one, it cannot be applied in construing the article under consideration, as according to it, one of the grounds for contesting the acknowledgment is that the child does not fall within the terms of paragraph 2 of article 119.

"The interpretation that seems to the writer more in accord with the spirit of the law, though it is not believed to eliminate all doubts and settle all questions before the law courts, is that the presumption of article 130 and the prohibition of article 132 remain in full force; and that the acknowledgment may be contested only when the parent making it separately does not possess the requirement of article 130, that is, that he could not freely marry at the time of the conception, and that, therefore, the child is not a natural one. So that the contest is confined to the very act of the acknowledgment and to the person making it, without invalidating the provision of article 132."

In the matter of the Intestate Estate of Enriquez and Reyes (29 Phil., 167), it appears that Vicente Atanacio Enriquez commenced proceeding in the Court of First Instance to establish his right to inherit the property of Aurea Enriquez as her natural child. Other relatives of Aurea-Rafael and Josefa Aquino-instituted another proceeding contesting his acknowledgment as such natural child, and both of these cases were consolidated in the court below. The parties entered, in open court, into the following agreement of facts: "It is agreed by and between the parties in this case, through their respective attorneys, that the child Vicente Atanacio Enriquez is the son of Aurea Enriquez, begotten by a priest, member of the Roman Catholic Church; that at the time of the conception of this child, that priest was a member of the Roman Catholic Church."

In view thereof, the judge held that this child was the owner of all the paraphernal property of Aurea Enriquez, as well as of her undivided one-half in the estate of Francisca Reyes, and entered judgment accordingly. Rafael and Josefa Aquino appealed from that judgment, and this court condensed the errors assigned by the appellants into the single question of whether or not Vicente Atanacio Enriquez was an acknowledged natural child of Aurea Enriquez. In deciding this question, this court reached the conclusion that, according to General Orders No. 68, promulgated December 18, 1899, six years before Vicente Atanacio Enriquez was born, priesthood is not an impediment to contract marriage, and is neither any cause for nullifying or restricting the meaning of the words "any unmarried male * * * and any unmarried female * * *" used in the said General Orders No. 68, which is the law of civil marriage. Consequently, the parents being competent to contract marriage at the time of the conception of the child, according to the agreement of facts, this court affirmed the judgment appealed from, declaring Vicente Atanacio Enriquez as an acknowledged natural child of Aurea Enriquez.

As will be seen, in that case there was no question as to the paternity of Vicente Atanacio Enriquez, in view of the facts agreed upon submitted by the litigating parties to the court. In the instant case, the question raised by the intervention of the appellant calls for a determination of the paternity of the deceased Bidiones. Over the objection of counsel for the appellee, and to rebut the evidence adduced by the same, the court, erroneously in our opinion, allowed the appellant to introduce evidence tending to prove the paternity of the child Pio Bidiones, deceased. We hold that the evidence introduced to establish this fact is inadmissible, for the reason that this is not one of the cases specified in article 135, which permits the investigation of the paternity of natural children.

In support of his contention, the appellant cites two decisions of the supreme court of Spain of June 9, 1893, and

April 23, 1904. In the first of these two cases, a child, who was admittedly a natural child, instituted an action to annul the acknowledgment of other four children who had been acknowledged by their father as natural children also. Those four children had been living uninterruptedly with their father, bearing the latter's surname and receiving support from him as his children. The sole heirs by law of the father were his natural children, and in his last will the said father gave two-thirds of his property, constituting the free portion, to these four children to be divided among them in equal shares. The child who admittedly had the status of a natural child opposed such distribution of the inheritance, as his share was thereby reduced to but one-fifth of one-third of his father's estate, which his father could not freely dispose of because the four children were not in fact natural children, and that, therefore, he was entitled to succeed to all of his father's property. In support of his claim, he alleged that the four children aforesaid were the children of a woman, whose name he mentioned, said woman with whom their father cohabited openly and publicly during the years 1871 to 1885 (the period within which the four children were born) was married. The guardian of the four children objected to the introduction of any evidence tending to establish the identity of the mother on the ground that under article 130 of the Civil Code it must be presumed that they were natural children. This objection was sustained, but the supreme court reversed the judgment, handing down an opinion wherein it is held:

"That article 130 of the Civil Code does not define natural filiation, but considering it as already defined in article 119 and assuming the right granted to either parent by 129 to acknowledge separately a child having that status, it merely declares, as a logical sequence of that right, that the child thus acknowledged is presumed to be natural, if the acknowledging parent was at the time of the conception competent to contract marriage.

"That the presumptions established by law can be rebutted by evidence to the contrary, except in those cases where it is prohibited by the law so to do.

"That it is expressly permitted, with such limitations as can be implied from the provisions of the same Code relating to investigations of the paternity and maternity, to contradict the presumption established in said article 130 inasmuch as under article 138, any person whose interests may have been injuriously affected by the child's acknowledgment has the perfect right to contest it, not only when the provisions relating to the act of acknowledgment were not complied with, but also when the acknowledged child is not a natural one within the terms of article 119.

"That the prohibition to disclose the name of the father or mother who did not join in the acknowledgment of a natural child made separately by any one of them, evidently contemplates said act, wherein on account of its personal character as well as for other reasons a parentage cannot be attributed to a third person who does not voluntarily recognize it; but said prohibition contained in article 131 does not mean that the name might not be revealed in any of the cases permitted by law, as that would be in conflict with the right of action which the law grants the child acknowledged by only one of its parents to compel his acknowledgment by the one who did not join the acknowledgment, and the right of a third person thereby prejudiced to contest it even in its essential feature, he is, in so far as it illegally gives the child the status of a natural one."

In the case cited there was no question about the investigation of the paternity, but of the maternity, which, as aforesaid, is permitted by the Code. We are of the opinion that the doctrine laid down in that decision is not in conflict with the theory maintained by us that the investigation of paternity is prohibited, except in those cases specified in article 135. Although article 141 prohibits only the investigation of the paternity of illegitimate children who have not the legal status of natural children, however, this should be understood as part of the development of the principle contained, in Basis No. 5 of the Law of Bases of May 11, 1888, for the preparation and publication of the Civil Code, prohibiting the investigation of paternity. According to said Basis No. 5, the investigation of paternity shall not be allowed, except in the cases permitted by it, and the exceptions are specified in article 135. It cannot, therefore, be said that as the investigation of the paternity of illegitimate children, other

than natural, is expressly prohibited by article 141 a sensu contrario, it should be permitted in the case of natural children. The prohibition subsists in either case according to said Basis No. 5, though exceptions are recognized by law, such as those mentioned in cases Nos. 1 and 2 of article 140, as regards the former class of children, and those contained in article 135, as regards the latter.

In the case in which the decision of April 23, 1904, was rendered, it appears that M. V. had acknowledged two children as natural. Later on, he married the plaintiff, and a daughter was born to them. The plaintiff wife filed suit to annul the acknowledgment of the two children in question, alleging that their mother was one C. T., a woman, who at the time of the conception of both children, was married to D. J. The guardian ad litem of the two children objected to the admission of any evidence tending to prove this allegation and the judge sustained the objection. In reversing the judgment on appeal, the Supreme Court laid down in its opinion the following:

"That it is a settled and fundamental principle on which the organism for the administration of justice is based that whenever any person comes into court to assert any right, he should be heard and his claim decided after due trial, it being unlawful to reject the complaint altogether in any case other than those, expressly and clearly enumerated and specified by the law;

"That article 141 of the Code refers to cases Nos. 1 and 2, but not to No. 3, of article 140;

"That at any rate article 140 has no application in an action instituted by the mother to annul the acknowledgment of natural children made by their father, because the scope and importance of such act are entirely distinct from what can be inferred from the provisions regulating the acknowledgment of illegitimate children who are not natural;

"That article 132 of the same Code has nothing to do with the nature of that action, though it can be taken into account, in a proper case, in deciding the question on its merits."

There is an essential difference between the two cases cited and the one at bar, and, that is, that in said two cases the investigation of maternity was the point at issue, while in the case at bar the appellant attempts to investigate the paternity of a child acknowledged by its mother alone.

In conclusion, we hold that the judge a quo did not commit the first error assigned by the appellant. Having reached this conclusion, we deem it unnecessary to discuss the second assignment of error.

It only remains for us to add that the right of the appellee to succeed to the property left by her child, Pio Nono Bidiones, is secured not only by the prescriptions of the Civil Code above cited, but also by the express provisions of section 768 of the Code of Civil Procedure, as it appears from the record that the deceased, Pio Nono Bidiones, was adopted by the spouses, Maximo Bidiones and Petrona Bunda, and that Micaela Borres was his true mother. Said section provides:

"The natural parents, except when such child is adopted under the provisions of the second preceding section shall, by such order, be divested of all legal rights and obligations in respect to the child, and the child shall be free from all legal obligations of obedience and maintenance with respect to them. Such child shall be to all intents and purposes the child and legal heir of the person so adopting him or her, entitled to all the rights and privileges, and subject to all the obligations of a child of such person begotten in lawful wedlock: Provided, nevertheless, That, the child so adopted shall still remain the legal heir of his father and mother, and in case of the death of the child, his father and mother and relatives by nature, and not by adoption, shall remain his legal heirs."

The spirit of the law is conclusive, and its letter more conclusive still. There is no room for its construction. The only alternative is to apply it in the case at bar. There is no evidence in the record to the effect that the mother, Micaela Borres, could not marry at the time of the conception of the child, Pio Borres.

In view of the foregoing, the order appealed from should be, as is hereby, affirmed with the costs against the appellant. So ordered.

Johnson, Malcolm, Ostrand, and Johns, JJ., concur.

Street, J., concurs in the result.

CONCURRING

ROMUALDEZ, J., with whom concurs ARAULLO, C. J.,

I concur in the result. The rights of the appellee find their support in the provisions of the Civil Code cited in the decision of the majority, but I deem it necessary to remark that it is only by considering the relationship of Micaela Borres and Pio Nono Bidiones as her natural child and capable of legitimation that section 768 of the Code of Civil Procedure, mentioned in the decision, can be held to support appellee's rights. To my mind the phrase "his father and mother and relatives by nature" as used in said section 768 of the Code of Civil Procedure taken in connection with the context thereof cannot have the effect of giving every father, mother or relative by nature, the right to succeed their illegitimate children or relatives by virtue of the act of adoption, even if the law declares them absolutely disqualified to inherit; in other words, I am of the opinion, that this provision of the Code of Civil Procedure cannot be given the effect of repealing in this respect the principles established by the Civil Code in the matter of succession, which mark a fundamental distinction between the legitimate relationship or one capable of legitimation and that which is absolutely illegitimate. The Civil Code is still in force on this point. The Code of Civil Procedure itself very clearly says so in its section 684, which provides as follows:

"SEC. 684. Allowance to widow and family, and descent of estate.—The widow and minor children of a deceased person, during the settlement of the estate, shall receive therefrom, under the direction of the court, such allowances as are provided by the law in force in the Philippine Islands, on and immediately prior to the thirteenth day of August, eighteen hundred and ninety-eight, and the descent of all property and estates to heirs shall be regulated by that law as to all property belonging to intestate estates, and as to all property belonging to testate estates, but not disposed of by the will of the testator. * * *" (Italics ours.)

As was declared very aptly by Justice Willard in his preliminary note to Book 3, title 3 of the Civil Code:

"These articles (referring to articles 614, 684 and 753 of the Code of Civil Procedure) preserve the substantive rights established by the Spanish law as to descent, in estates both testate and intestate. * * *" (Willard's Notes to the Spanish Civil Code, page 47.)

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